

# **Clustered Interactive Dialogue on the Reports of the Special Rapporteur on the Right to Health and the Special Rapporteur on Trafficking**

## **Statement by the Delegation of the United States of America Human Rights Council 17th Session Geneva, June 1, 2011**

Thank you, Mr. President.

The United States wishes to thank Special Rapporteurs Grover and Ngozi for their reports. The United States greatly values the opportunity provided by the interactive dialogues to explore important human rights issues in greater depth.

### **SR Health**

The United States and other countries have long agreed that all people everywhere have “the right to the enjoyment of the highest attainable standard of health.” The United States is also committed to supporting the Millennium Development Goals, which include goals related to health.

However, we do not agree with all of the human rights conclusions started in SR **Right to Health Grover’s** report. This “right to health framework” is not well-defined, nor, even more importantly, is it necessarily beneficial to the advancement of the two purposes at stake here, human rights and public health. We would prefer to see the Special Rapporteur adopt a different approach to his mandate that advances these crucial purposes.

Any approach must use evidence-based objective evaluations. Evidence-based decision-making is critical for transparency and accountability. While human rights considerations are significant to health policy decisions, they must complement and not replace fact-based decision-making.

Although we disagree with many of the reports’ conclusions, we appreciate the human rights analysis of treatment of people with HIV/AIDS.

We look forward to continued discussion with Special Rapporteur Grover.

We greatly appreciate **Special Rapporteur on Trafficking Ngozi** focusing on the need for effective remedies for trafficked persons, including restitution, recovery, compensation, satisfaction and guarantees of non-repetition, access to information, legal assistance, and regularization of residence status in her report. We would like to briefly highlight points that have not received enough international attention.

- **Restitution and compensation for the victim.** Restitution and compensation attack the traffickers' profit motivation and puts them – and sometimes an entire network – out of business. Making victims aware of and facilitating their access to these remedies is a powerful tool to restoring the victims' human dignity and honor. Further, it is a method to pay them what they are rightfully owed.
- **Recovery services** tend to be available to certain categories of trafficked persons at the exclusion of others, such as men and child victims of internal trafficking. All countries, including the United States, can do more to strengthen efforts to ensure services, including shelters, are available to all categories of victims.
- With regard to the issue of tying a foreign victim's cooperation with law enforcement with that of immigration relief and additional benefits and services, the **United States takes a different position** than that of the Special Rapporteur. We link a victim's cooperation to permanent immigration relief and public benefits to prevent fraud and misuse of benefits, and most importantly, to give victims a positive incentive to help bring their traffickers to justice and ensure these traffickers serve time in jail for their horrific crimes. It is important to emphasize, however, that this requirement of cooperation not be too onerous. In the United States, the standard for receipt of non-immigrant status is that an adult victim comply with any 'reasonable request' for assistance in the investigation or prosecution of acts of trafficking. For example, a victim providing a statement is taken to mean assisting in an investigation. We have exemptions for those "unable to cooperate with such a request due to physical and psychological trauma," and children are not required to assist **law enforcement to receive public benefits**. We encourage other states to implement similar provisions so that anti-trafficking benefits are not tied to the successful prosecution of a trafficker; it is not the victim's responsibility to ensure that traffickers are convicted.

- We do permit victims who decide not to cooperate with law enforcement the opportunity to pursue other forms of immigration relief for which they may be eligible, including asylum, the Violence Against Women Act Self-Petition, or Special Immigrant Juvenile Status.
- Finally, we would like to respectfully raise for consideration by the Special Rapporteur and Member States certain practices the United States has observed in other parts of the world regarding how the ‘reflection and recovery period’ has been applied. The United States has observed that some countries use the reflection and recovery period essentially as a temporary delay of an expulsion order. Other countries only offer longer-term care (beyond 30 days) to victims if they agree to ultimately return to their country of origin. In these instances, opportunities for victims to apply for permanent residency are severely limited, or citizenship is simply not an option. These practices offer victims few meaningful alternatives but to return to their **home country where they may face retribution** from their traffickers – an eventuality directly in contrast with the reflection and recovery period’s stated goal of “contributing to the security and well-being of trafficked persons.” A reflection and recovery period offers little help if it does not ultimately contribute to the safety of the victim and provide them with a pathway to a new life.

We thank the Special Rapporteurs for their work.